

VZCZCXRO1668
PP RUEHDBU RUEHPW
DE RUEHMO #1487/01 1561248
ZNY CCCCC ZZH
P 051248Z JUN 09
FM AMEMBASSY MOSCOW
TO RUEHC/SECSTATE WASHDC PRIORITY 3656
INFO RUCNAFG/AFGHANISTAN COLLECTIVE
RUCNCIS/CIS COLLECTIVE
RUEHDX/MOSCOW POLITICAL COLLECTIVE
RUEHZG/NATO EU COLLECTIVE

C O N F I D E N T I A L SECTION 01 OF 03 MOSCOW 001487

SIPDIS

E.O. 12958: DECL: 06/05/2019

TAGS: [PGOV](#) [PREL](#) [MARR](#) [AF](#) [RS](#)

SUBJECT: RUSSIA EAGER TO CONCLUDE AGREEMENT ON LETHAL
TRANSIT TO AFGHANISTAN

Classified By: Deputy Chief of Mission Eric Rubin for reasons 1.4 (b/d)

¶1. (C) Summary: Russian officials expressed genuine interest in overcoming obstacles to conclude an agreement with the U.S. on lethal transit to Afghanistan during May 27 talks, and passed a draft agreement to the U.S. delegation. Deputy Foreign Minister Sergey Ryabkov said that there might be creative solutions to the two principal problems to concluding an agreement: Russian insistence on charging air navigation fees for state flights and required inspection landings of aircraft carrying lethal material. The Russian side expressed a preference for a legally binding agreement over the U.S. proposal for an exchange of notes, and explained that an agreement would have to be ratified by the Russian parliament. Russian officials appeared eager to conclude an agreement in time for the July Presidential summit, but said that it was important for the U.S. and Russia produce a document that was legally sound and would not draw criticism. End summary.

Positive Atmosphere

¶2. (C) On May 27, Ambassador Stephen Mull told a GOR interagency delegation that the U.S. was pleased by Moscow's offer to conclude a lethal transit agreement, and hoped to move forward on this issue by the July summit. He explained that the U.S. was using several routes to supply Operation Enduring Freedom and the International Security Assistance Force (ISAF) in Afghanistan, but added that an agreement with Russia would have intrinsic value as well as a demonstrative effect in refocusing our common commitment to combat terrorism. MFA North America Department Director Igor Neverov responded by telling the visiting U.S. delegation that the GOR took seriously President Medvedev's instructions to make an Afghan lethal transit agreement possible, and understood the importance of reaching an agreement that would assist U.S. efforts in Afghanistan. Neverov said that he expected differences to emerge in the course of negotiations, and stressed the precedent established by the lethal transit agreements already concluded with Germany, France and Spain, each of which accepted Russian requirements for these agreements, including ratification by the Russian Duma. Neverov explained that the GOR was determined to conclude an agreement with the U.S. and have a "deliverable" for the U.S. and Russian Presidents' July meeting.

¶3. (C) This positive atmosphere extended to Russian openness toward overcoming the principal obstacles to reaching an agreement, and DFM Ryabkov told Ambassador Mull during a separate meeting that the GOR was open to finding creative solutions to address the U.S. objection to paying air navigation fees for official flights, and Russia's legal requirement that aircraft carrying lethal cargo land for inspection.

Russia Requires a Legally Binding Agreement

14. (C) Neverov accepted the U.S. focus on a lethal air transit corridor (vice a lethal ground transit corridor), and explained that whereas the U.S. proposed concluding this agreement through an exchange of letters, the GOR required a legally binding agreement. The former option had worked for the non-lethal surface transit agreement already in place, but the hazardous nature of the cargo to be moved under a lethal agreement necessitated the inclusion of certain legal guarantees, including:

-- Establishing the mutual rights and obligations of the two parties, whereas an exchange of letters puts the onus on Russia.

-- Establishing requirements for insurance, liability, and a mechanism to settle disputes related to implementing the agreement.

15. (C) A legally binding agreement also gave certain flexibility, such as the codification of exceptions to Russian law, which did not come with an exchange of letters, and clarified practical issues such as the need to notify the GOR 48 hours in advance of shipments. Neverov also explained that Russian law required any agreement touching upon issues of security and international peace to be ratified by the Duma, although transit could begin once an agreement had been signed and did not have to wait for formal ratification.

Requirements for Lethal Transit

MOSCOW 00001487 002 OF 003

16. (C) Aleksandr Dulenko, Counselor in the GOR Administrative Department, explained that the legal requirements for the transport of lethal cargo were accepted by France, Germany and Spain when concluding their individual lethal transit agreements with Russia. These requirements include:

-- Aircraft transporting lethal cargo are required to land in Russia for customs inspection that entails customs officials verifying that an aircraft's documentation is correct. Yelena Mayevskaya of the Federal Customs Service said that cargo would not be inspected unless there was reason to believe the aircraft carried something other than what was listed on the manifest. Russian legislation does not allow exemptions to this landing requirement, although GOR officials involved in the discussions thought a simplified procedure for checking documents could be reached in the case of U.S. transit flights.

-- Cargo transiting Russia is exempt from customs duties, although a fee is required for customs administration.

-- Aircraft crews do not require visas.

-- Aircraft transporting military personnel with their "personal arms" do not have to land for customs inspection. The example was given of an infantry company transported with mortars and anti-tank systems. The GOR would consider these the organic arms of the company and not require the flight to land. Asked to clarify the Russian text's exemption of "personal arms," the GOR delegation described light and small arms, such as service weapons, and "special logistical equipment" as mobile kitchens or other troop logistics.

-- Transport of lethal cargo requires advance customs service authorization. Blanket authorization for multiple flights carrying ammunition or other such general military material could be issued for a year. Single authorization would be made for flights carrying more specialized cargo.

-- Routes must be consistent with the advance authorization.

The routes must correspond to major airports that can handle the aircraft being used, including unscheduled stops for bad weather, provide refueling and servicing for the aircraft, and capable of handling potentially hazardous cargo. Neverov pointed out that Germany uses the same airfield for all transit flights that land in Russia, and based a support crew there.

¶17. (C) Mull raised U.S. concern over the need to have every flight transporting lethal cargo land in Russia for what amounted to a document check, which would significantly add to the time required for delivery and increase costs. Citing the U.S. arrangement with the Bahamas as an example, Mull asked if this requirement could be waived or the documents examined at the flights' point of departure. Neverov doubted the landing requirement could be waived since it was required by Russian law, and in force with Germany, France and Spain. He downplayed prospects that Russia would agree to a treaty provision overruling the domestic legislation requirement for lethal transit flights to land, but said that some flexibility might be found to address the U.S. concern.

Air Navigation Fees

¶18. (C) Dmitri Savitskiy, Acting Director of the Russian Air Navigation Agency (ANA), explained that Russian law required levying fees for air navigation service regardless of whether aircraft were commercial or state. Without naming the U.S., Dmitri Mirko of the Russian Aviation Administration noted that the ANA already had "accumulated debt" and reiterated that waivers were not possible since the ANA was required to pay tax on the service rendered even if the air navigation fee was not paid. France, Germany and Spain accepted this requirement and paid air navigation fees for all their transit flights.

¶19. (C) Mull responded that the U.S. would not object to paying fees for chartered civilian flights, but reiterated that the U.S. did not recognize a government's right to impose fees on state flights. He asked if the GOR would consider covering the air navigation fees owed to the ANA as part of its contribution to stabilizing Afghanistan, and suggested that the U.S. could cap the number of daily flights at possibly three, thereby limiting the costs incurred by the GOR. Neverov replied that this proposal was a "legitimate question."

MOSCOW 00001487 003 OF 003

¶10. (C) Neverov said that Russia did not envisage any restrictions on the number of U.S. flights that would be allowed under the agreement, adding that the U.S. could send as many as were needed to "assist the effectiveness of the international force in Afghanistan," but asked for the projected volume of U.S. flights. While noting that no formal planning had begun, the U.S. delegation suggested that a minimum of 2-3 flights a day would likely be necessary to make the route feasible. Savitskiy explained that air navigation fees are calculated based upon the length of a route and path an aircraft takes through Russian airspace.

¶11. (C) Asked whether a legally binding and ratified agreement could contain exceptions to the GOR requirement for state flight charges, Neverov responded "great minds think alike." He confirmed that a ratified agreement would create a legal norm and that, in practice, the U.S. and Russia have allowed different procedures in the past. He emphasized that an international agreement would prevail over domestic legislation.

Next Steps

¶12. (C) Mull undertook to provide written responses to the Russian text, but flagged the air navigation fees and

requirement to land for customs inspections as obvious areas
of concern.
BEYRLE